

This letter sets out a standard drop-shipment situation. See, 86 Ill. Admin. Code 130.1405. (This is a GIL.)

January 4, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated October 21, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We have a question concerning about the drop shipment to the third party. What I meant is, for instance, we have an order from one of our customer 'A' who located in Indiana, and they want us to ship that order by the common carrier to their customer 'B' who located in Illinois. Since our customer 'A' is not located in Illinois, and did not register in Illinois. Should we charge sales tax for that order? Please advise, if you have any rules or policies for this type of transaction, please send to us, Thanks. If you have any questions, please feel free to contact me at ####. Thanks again.

In your letter, you have set out a standard drop-shipment situation in which an out-of-State purchaser (Company A) makes a purchase for resale from a company that is registered with Illinois (Company B) and has Company B drop-ship the property to Company A's customer (Customer) located in Illinois. Please note that the references to Company A and Company B in our standard drop-shipment situation may not match the references in your letter.

As a seller required to collect Illinois tax, Company B must either charge tax or document an exemption when it makes a delivery in Illinois. In order to document the fact that its sale to Company A is a sale for resale, Company B is obligated by Illinois to obtain a valid Certificate of Resale from Company A. See the enclosed copy of 86 Ill. Adm. Code 130.1405. Certificates of Resale must contain the following items of information.

1. a short statement from the purchaser (Company A) that items are being purchased for resale;
2. seller's (Company B's) name and address;
3. purchaser's (Company A's) name and address;
4. purchaser's signature and date of signing;
5. a sufficient identification of the items purchased for resale;

6. purchaser's registration number with the Illinois Department of Revenue, or

purchaser's resale number issued by the Illinois Department of Revenue.

If Company A has no nexus whatever with Illinois, it is unlikely that Company A would be registered with Illinois. If that is the case, and if Company A has no contact with Illinois which would require it to be registered as an out-of-State Use Tax collector for Illinois, then Company A could obtain a resale number which would provide it the wherewithal to supply a required number to Company B in conjunction with a Certificate of Resale. We hope the following descriptions of out-of-State sellers required to register, either as Illinois retailers or as out-of-State Use Tax collectors and persons who qualify for resale numbers, will be useful.

ILLINOIS RETAILERS

Assuming a delivery in Illinois, an Illinois retailer is anyone who either accepts purchase orders in Illinois or who sells items of tangible personal property which are located in Illinois at the time of sale. See the enclosed copy of 86 Ill. Adm. Code 130.605(a).

OUT-OF-STATE USE TAX COLLECTORS

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (see subsection (i) of the enclosed copy of 86 Ill. Adm. Code 150.201), must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See subsection (c) of the enclosed copy of 86 Ill. Adm. Code 150.801. Please note that out-of-State sellers with any kind of representative in Illinois (not just sales or lease agents) are required to register as out-of-State Use Tax collectors.

RESALE NUMBERS

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items which will be resold. So long as Company A does not act as an Illinois retailer and, so long as it does not fall under the definition of a "retailer maintaining a place of business in this State", its sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax liability and it cannot be required to act as a Use Tax collector. So long as this is true, Company A qualifies for a resale number which does not require the filing of tax returns with the Illinois Department of Revenue.

Please note that the fact that Company A may not be required to act as a Use Tax collector for Illinois does not relieve its Customer of Use Tax liability. Therefore, if Company A does not collect Illinois Use Tax from its Customer, the Customer would have to pay its tax liability directly to the Illinois Department of Revenue.

OTHER EVIDENCE

While active registration or resale numbers on Certificates of Resale are still preferred, the Illinois Retailers' Occupation Tax Act provides as follows:

"Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale."

Again, a registration or resale number from Company A on a Certificate of Resale is the preferred method for documenting that its purchase from Company B is a purchase for resale. However, in light of this statutory language, a certification from Company A on a Certificate of Resale in lieu of a resale number which described the drop-shipment situation and the fact that it (Company A) has no contact with Illinois which would require it to be registered and that it chooses not to obtain an Illinois resale number could constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. The risk run by Company B in accepting such a certification and the risk run by Company A in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided by Company B as evidence that the particular sale was, in fact, a sale for resale.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Encl.